

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Vorbach et al.
 Serial No. : 10/523,764
 Filed : August 2, 2005
 For : DATA PROCESSING METHOD AND DEVICE
 Examiner : Tuan V. Thai
 Art Unit : 2185
 Confirmation No. : 7557

Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

CERTIFICATION OF ELECTRONIC TRANSMISSION
 I hereby certify that this paper is being electronically transmitted to the
 United States Patent and Trademark Office, via the Office electronic
 filing system on December 2, 2008

/Josephine B. Hardy/
 Josephine B. Hardy

**PETITION UNDER 37 C.F.R. 1.181(a) TO WITHDRAW ERRONEOUS HOLDING
 OF ABANDONMENT DUE TO PATENT OFFICE ERROR**

SIR:

In response to the "Notice of Abandonment" (hereinafter "Notice") mailed October 31, 2008, Applicants respectfully submit this Petition under 37 C.F.R. § 1.181(a) to withdraw the erroneous holding of abandonment in the above-captioned application.

The Notice states that the application is abandoned in view of Applicants' failure to timely file a proper reply to the Office letter mailed on May 1, 2008. However, as detailed below, Applicants properly and timely filed a response to the Office Acton mailed May 1, 2008 together with a certificate of mailing or transmission.

Applicants submit herewith a copy of the following documents: (1) Response to Restriction Requirement **electronically filed on October 30, 2008**, along with (2) a copy of the Petition for Extension of Time Under 37 C.F.R. 1.136(a) (requesting an extension of time until November 1, 2008), (3) the Electronic Patent Application Fee Transmittal, and (4) a copy of the Electronic Acknowledgement Receipt (ID # 4208683). Each of enclosures (1) – (4) are copies of the electronically-filed documents downloaded from the Patent Office IFW for the above-identified application.

The Request for Extension of Time in compliance with 37 C.F.R. § 1.136(a) includes a certificate of transmission in compliance with 37 C.F.R. § 1.8, which certifies that

the Response and its Transmittal were electronically transmitted on October 30, 2008. Therefore, the effective filing date of Applicants' Response and payment for the Extension of Time is October 30, 2008.

The United States Patent and Trademark Office Electronic Acknowledgment Receipt dated October 30, 2008 is *prima facie* evidence that the United States Patent and Trademark Office received the Response to the Office Action of May 1, 2008. The posting of the response on the IFW indicates that the Patent Office not only received the Response, but also posted the Response and Extension of Time on October 30, 2008, before the term for responding had ended.

Applicants therefore respectfully petition the Commissioner under 37 C.F.R. § 1.181(a) to withdraw the erroneous holding of abandonment – which was in error since a response was timely filed and received by the U.S.P.T.O.

As this petition was necessitated by Patent Office error, no fee is believed to be required in connection with this petition under 37 C.F.R. § 1.181(a). However, the Commissioner is authorized to charge any fees that may be necessary in connection with this petition under 37 C.F.R. § 1.181(a) (or any other matter relating to the above-captioned application) to the deposit account of **Kenyon & Kenyon LLP, Deposit Account No. 11-0600**.

Respectfully submitted,

Date: December 2, 2008

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